

*In the Matter of Timothy Maynor*

DOP Docket No. 2006-2220

**(Merit System Board, decided February 8, 2006)**

Timothy Maynor, a former Repairer with the Division of Purchase and Property in the Department of the Treasury, requests that the Merit System Board (Board) grant him a hearing regarding his removal from employment on disciplinary charges, effective May 27, 2005.

The pertinent facts of the matter are as follows: The appellant was personally served on May 27, 2005 with a Final Notice of Disciplinary Action (FNDA) removing him from employment effective the close of business on May 27, 2005. The FNDA was prepared on a form used for employees who are members of the Communications Workers of America (CWA). The appellant is a member of Local 195 of the International Federation of Professional and Technical Engineers (IFPTE). Under terms of an agreement entered into between the CWA and the State of New Jersey, CWA members are no longer permitted to file appeals of disciplinary action with the Board, but are required to submit their appeals to the CWA, which in turn, may appeal the matter by forwarding a written notice to the Governor's Office of Employee Relations (OER) within 30 days of the employee's receipt of the FNDA.<sup>1</sup> *See also N.J.S.A. 11A:2-14.* The FNDA received by the appellant had the CWA designation crossed out and the IFPTE designation put in its place. On June 23, 2005, the appellant filed an appeal of his removal directly with the OER. On June 27, 2005, it appears that IFPTE sent a copy of the appeal to the Board.

## CONCLUSION

In the instant matter, the appellant requests a hearing on the merits of his removal from employment. *N.J.S.A. 11A:2-15* provides that any appeal from adverse actions specified in *N.J.S.A. 11A:2-13* and subsection a.(4) of *N.J.S.A. 11A:2-6* shall be made in writing to the Board no later than 20 days from receipt of the final written determination of the appointing authority. *N.J.A.C. 4A:2-2.8* provides that an appeal from a final notice of disciplinary action must be filed within 20 days of the receipt of the notice by the employee, *and if the appointing authority fails to provide the employee with the final notice, an appeal may be made directly to the Board within a reasonable time* (emphasis added). Thus, an appellant must establish that his/her appeal is timely in order for the Board to have jurisdiction to consider the request. In the present matter, the appellant was served with a substantially defective FNDA in that it did not provide him with notification of the right to appeal as it applied to him. As such, the Board has

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<sup>1</sup> It is noted on the CWA form that any notice of appeal sent directly by an employee to the OER will not be forwarded to the CWA and may impact the timeliness of the appeal.

determined that the appellant did not receive notice in a manner which would start the running of the 20-day statutory period for filing an appeal. Accordingly, the Board must decide whether or not the appellant filed his appeal within a “reasonable time” as that phrase is construed within the context of *N.J.S.A.* 11A:2-15 and *N.J.A.C.* 4A:2-2.8(b).

Here, the record indicates that the appellant received the defective FNDA on May 27, 2005 and filed an appeal with the OER on June 23, 2005. Additionally, it appears that IFPTE filed a copy of the appeal with the Board on June 27, 2005. The fact that the appellant received a FNDA which indicated he had 30 days to file an appeal and filed it within that 30-day period, illustrates his clear intent to appeal. Therefore, the Board finds that under the circumstances of this matter, the appellant’s filing of his appeal on June 23, 2005 was within a reasonable time. See *Jones v. Dept. of Civil Service*, 118 *N.J. Super.* 323 (App. Div. 1972); *In the Matter of Valorie Ealy*, Docket No. A-6867-99T5 (App. Div. February 6, 2002); and *In the Matter of Terri Ann Fellner* (MSB, decided January 15, 2003). Accordingly, the Board grants the appellant’s request for a hearing, and the matter should be referred to the Office of Administrative Law (OAL) for a hearing.

## **ORDER**

Therefore, it is ordered that the matter of appellant’s request for a hearing be transmitted to the Office of Administrative Law for a hearing as a contested case.